City of Cherokee / IUOE #234

2005-2006
CEO 143
SECTOR 1

In the Matter of the Fact Finding Between

CITY OF CHEROKEE, IOWA
Employer

And

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 234
Union

APPEARANCES:

Miller, Miller, Miller, P.C., by Mr. Marvin Wallce Miller, Jr., appearing on behalf of the City

Mr. MacDonald Smith, Attorney at Law, appearing on behalf of the Union

FACT FINDER'S REPORT AND RECOMMENDATIONS

The City of Cherokee, Iowa, hereinafter City or Employer, and the International Union of Operating Engineers, Local 234, hereinafter Union, reached impasse in their bargaining for the 2006 - 2007 collective bargaining agreement. Pursuant to the PERB [621], Chapter 7, Impasse Procedures, the parties selected the undersigned from a list of neutrals provided to them by the Iowa Public Employment Relations Board, hereinafter PERB, to conduct a hearing and issue a report and recommendations on the issue(s) in dispute herein. A hearing in the matter was held on March 7, 2006 in Cherokee, Iowa. At hearing the parties presented documentary evidence, testimony, and argument in support of their final offers on the issues in dispute. Also at hearing, because of conflicting summaries regarding the health insurance benefits provided to employees in those communities one or the other party deemed an external comparable, the fact finder directed the parties to provide him with the contract language pertaining to the health insurance benefit allegedly provided that either the City or Union is relying on for support of their proposal in this case. The undersigned received that information on March 10, 2006.

PARTIES' FINAL OFFERS:

City

1. Article 3 - Definitions: Definition of Overtime

   The definition of overtime modified to provide that overtime is only hours in excess of 40 hours within a 7 day period.

2. Article 7 - Grievance Procedure

   Article 7.3 at Step 4 should remain as is.

3. Article 8 – Work Schedules

   The City wants all maintenance staff to have the same hours, 7 a.m. to 4 p.m. with a 1 hour lunch period. The language in Article 8.5 regarding employees receiving a paid ½ hour lunch should be stricken. The ½ hour lunch was intended to apply only to firemen.

4. Article 9 – Overtime Pay

   Article 9.1 should be amended so that overtime applies only to hours worked in excess of 40 hours within a seven day period

5. Article 10 – Call-In Pay

   At Section 10.2 "water and sewer department and street department employees" should be removed and replaced with "all employees".

6. Article 11 – Weekend & Holiday Duty (Water & Sewer Departments)

   It should be expunged

7. Article 16 – Job Postings (Vacancies & New Positions)

   At Section 16.4 following "most senior qualified employee" the wording "if qualified to perform all requirements of the position."

8. Article 17 – Insurance

   The City asks that employees pay 50% of their dependent/family health insurance.

9. Article 18 – Leave with Pay

   Vacation should stay the same and at 18.2 part-time should be removed. At 18.4 E wording needs to be changed and it should read "and not separating due to misconduct" in place of "with the City"

10. Article 19 – Wages: Appendix "A" Salary Schedule

    The City proposes a 2% increase.

11. Article 21 - Longevity Pay

    It should remain the same.

Union

1. Article 3 - Definitions: Definition of Overtime

   No proposal (maintain current contract language)

2. Article 7 - Grievance Procedure

   Add the number 3 at the end of Section 7.3, Step 4.

3. Article 8 – Work Schedules Section 8.2 & 8.5

   Current contract language

4. Article 9 – Overtime Pay

   Current contract language

5. Article 10 – Call-In Pay

   No proposal (maintain current contract language)

6. Article 11 – Weekend & Holiday Duty (Water & Sewer Departments)

   Current contract language

7. Article 16 – Job Postings (Vacancies & New Positions)

   No proposal (maintain current contract language)

8. Article 17 – Insurance

   No proposal (maintain current contract language)

9. Article 18 – Leave with Pay Section 18.3 Vacation Leave

   0-1 years = 5 days

   2-5 years = 10 days

   5-10 years = 15 days

   10-20 years = 20 days

   20+ years = 25 days

10. Article 19 – Wages: Appendix "A" Salary Schedule

    Effective 7/1/06 – 3% across-the-board increase to all classifications

11. Article 21 - Longevity Pay

Add Ten Cents ($.10) per hour to each step of the current longevity schedule.

BACKGROUND:

The Union is the exclusive collective bargaining representative of "All City of Cherokee Employees in the following classifications: Deputy Clerk, Administrative Assistant, Full-time Fire Department Employees, Full-time Street , Sanitation, Water and Cemetery Employees. The parties have previously negotiated one collective bargaining agreement covering the period July 1, 2005 through June 30, 2006. This dispute is concerned with a successor to that agreement. Both parties are proposing that the successor agreement be a one-year contract for the period July 1, 2006 through June 30, 2007.

At hearing in this matter the parties were able to resolve two of the items that were in dispute dealing with Articles 10 and 16. In the case of Article 10, Section 10.2 the City proposed to amend the language so as to remove the words "Water and Sewer Department and Streets Department Employees" and replace it with "All employees". The Union agreed at hearing to accept the City's proposed change to the language of Article 10, Section 10.2. The second item the parties were able to resolve at hearing concerned the City's proposal to amend the language of Article 16, Section 16.4. The City proposed in the first sentence of Section 16.4 to add after "the most senior qualified employee" the words "if qualified to perform all requirements of the position." The Union stipulated at hearing that the existing language of Article 16, Section 16.1 already provided that the bidder selected to fill the vacancy or new position must possess the qualifications required for the posted position that is to be filled. Thus, the Union agreed that the City's concern that gave rise to its proposal is taken care of in the existing language, and therefore, the City's proposed language change is unnecessary.

However, the parties were not in agreement as to the external comparable communities that are to be utilized by the fact finder when evaluating their proposals in this matter. This is only their second contract negotiation and there have been no prior

interest arbitrations involving this bargaining unit.[1] Consequently, that matter is necessarily a threshold issue in this dispute. The Union has proposed that the pool of external comparables should be made up of 11 communities based upon the criteria that they have organized bargaining units comprised of similar classifications as those involved in this matter, and with five of them having populations at least as large as Cherokee and four having smaller populations. It also has included two cities, LeMars and Spencer which are larger than Cherokee, but it contends they are geographically proximate. Also, it argued that the five cities having larger populations are within 30 to 40 miles of Cherokee, and the four smaller cities are within 50 miles of Cherokee. Also, the Union claims those cities it has included as external comparables are located within northwest Iowa as is Cherokee. The City on the other hand does not believe that LeMars and Spencer are comparable because of their larger populations even though they are geographically proximate. The City selected as comparables those Iowa cities with a population equal to, larger than or smaller than Cherokee by up to 1500 residents, regardless of their geographic proximity to Cherokee.

Arbitrators, when resolving disputes over which communities should be utilized as external comparables do so on the basis of such factors as geographic proximity, labor market area, proximity to large metro areas, substantial economic differences between alleged comparables, represented or unrepresented bargaining units, employee duties, cities relied upon in the past by the parties for comparison purposes, population size, tax base/equalized valuation, etc. One significant difference in this case between the City's and Union's proposed comparable groupings is that the City utilized population size of represented bargaining units without regard to their geographic proximity to Cherokee and whether they were arguably competing for employees in the same labor market labor area. The Union on the other argued that it chose its comparable pool based upon size relative to Cherokee's population and geographic proximity to Cherokee even if two of its proposed comparables are significantly larger than Cherokee in terms of population.

After analyzing the two proposed pools of comparables the undersigned finds neither is satisfactory. The City's pool includes many Cities that even though are within

[1] There is another represented bargaining unit in the City – police. However, neither party introduced any evidence of prior interest arbitration decisions involving that bargaining unit wherein the issue of the appropriate external comparables had been addressed. Thus, if such exists the undersigned is unaware.

+/- 1500 in terms of the population of Cherokee its pool includes cities form all over the state of Iowa in different labor markets and geographically so far removed from Cherokee as to have no obvious influence upon wage and fringe benefit decisions affecting the City of Cherokee and its employees. Also, some of those cites are located in close proximity to much larger metro areas or are surrounded by much larger cities and in those cases the wages, fringe benefits and conditions of employment are necessarily influenced by the wages, fringe benefits and conditions of employment enjoyed by the employees in those larger cites located in geographic proximity to them and with whom they must compete in the labor market for employees. Consequently, in the undersigned's opinion it would be inappropriate to consider them as comparable communities to Cherokee. The Union has also included within its proposed pool some cities that are, in the opinion of the undersigned, not sufficiently geographically proximate to be considered in the same labor market and thus an appropriate comparable. Centerville, Iowa Falls, Shenandoah, Vinton, and Waukee fall into that category, and therefore, the undersigned does not believe they are comparable. Centerville is located more than 150 miles S.E. of Cherokee, Shenandoah is located approximately 140 miles south of Cherokee, and Vinton is some 200 miles to the east. Additionally, Waukee is only ten miles west of Des Moines, and Iowa Falls is surrounded by five significantly larger cities (Mason City, Waterloo, Marshalltown, Ames, and Fort Dodge) which is another reason I do not believe it would be appropriate to consider them as comparables, notwithstanding their similarity to Cherokee in terms of population size.

Also, the parties presented no evidence regarding which, if any, communities they looked to for comparative purposes in their only other bargain. The City has argued that it does not believe LeMars and Spencer, because of their population size relative to Cherokee, should be considered comparables. However, the undersigned disagrees. I believe they should be considered in the comparable pool, although not as primary comparables, but rather as secondary comparables because of their size. They are both geographically proximate, within 35 to 40 miles of Cherokee, and thus, part of Cherokee's labor market, even though larger (LeMars 9,237, and Spencer 11,317 compared to Cherokee's population of 5,369).

Within an approximate 100 mile radius of Cherokee I found a number of other cities that are also county seats like Cherokee. However, most of them have populations that are more than 2000 less than Cherokee's 5369. In other words, less than half the size of Cherokee, and there also is no record evidence regarding whether they have represented employees and if they do what the employees wages, fringe benefits and working conditions are. Fort Dodge is also located within the 100 mile radius of Cherokee but its population size is almost five times the size of Cherokee (25136) and thus removes it from the list of possible appropriate comparables. There is however one city located within the 100 mile radius which neither party listed as a potential comparable. That city is Emmetsburg with a population of 3958, located within approximately 75 miles of Cherokee, and whose utility is organized and for whom there is data provided in the City's exhibits.

Thus, based upon the evidence the parties have provided me I believe the cities that should be included in any appropriate pool of external comparables are Algona, Estherville, Harlan, Emmetsburg, and Orange City as primary comparables, and LeMars and Spencer as secondary comparables. All are county seats, all have represented bargaining units, and the first three are located within 35 to 40 miles of Cherokee and the latter four are within 80 to 90 miles of Cherokee.

In future bargains, or if the undersigned's recommendations are not accepted and the parties proceed to arbitration, they can jointly agree to expand the pool of external comparables that the undersigned had adopted and/or each can attempt to persuade other fact finders and/or arbitrators that that there is sufficient evidence to support inclusion of other cities in the pool of appropriate comparables.

Thus, in analyzing the parties' proposals and comparing them to the record evidence regarding the wages, fringe benefits and conditions of employment of the external comparables the undersigned will utilize those cities I have identified above as being appropriate external comparables.

RECOMMENDATIONS:

Before engaging in an analysis of the parties' proposals I think it important to note a general observation about how arbitrator/fact finders have dealt with proposals to

change the status quo as many of the proposals in this case do. When faced with significant proposed changes in the negotiated status quo in public sector disputes, interest arbitrators/fact finders have required the proponent of change to establish a very persuasive basis for its proposal and to bear the risk of non-persuasion. In such situations the requisite very persuasive basis for change has normally been achieved by showing that a legitimate problem exists which requires attention, that the disputed proposal reasonably addresses the problem, and that the proposed change is accompanied by an appropriate quid pro quo. In connection with the first of these showings, it is noted that the proponent of language changes or additions, which normally cannot be quantified/costed on the same basis as so-called economic items, must present more than mere rhetoric or argument in support of its proposal. It must show that there is a definite need for the change, that the change addresses/solves the identified problem and/or is more reasonable than the other party's proposal to deal with the problem, if it has one. These considerations will be applied where appropriate in the dealing with the following proposals.

1. Article 7 Grievance Procedure

The City proposes no change to the current language, whereas the Union responds that the language of Section 7.3, Step 4 contains a typographical error that was created when the parties' contract was prepared. It argues that the language is intended to refer to the prior step in the grievance procedure which is Step 3, and that the number 3 was mistakenly omitted. It also notes that this language is part of a dispute (grievance and court action) between the parties relating to Article 8, Section 8.5 Lunch/Break Times.

The current Step 4 language establishes the requirement that the Union must notify the City in writing of its intention to move a grievance to arbitration if the grievance was not resolved in Step 3, and establishes the time frame within which the Union must do so. It is clear to the undersigned that the intent of this section is to deal with what action must be taken by the Union if it believes the City's response to a grievance at Step3 is unsatisfactory and it wants to move the grievance to the next step which is arbitration. The first line of the clause states "In the event the grievance remains

unresolved after completion of Step 3," thus, when the last sentence of the clause states "Such notice shall be forwarded within ten (10) working days following the date of the decision in Step." it clearly must be referring to the decision on the grievance in Step 3. A reference to any other step in the procedure would be illogical in terms of establishing a time frame within which the Union must decide to appeal the grievance to arbitration. It is the City's decision at Step 3 that governs the Union's decision whether to appeal the grievance to arbitration. Thus, the time frame within which it must appeal is necessarily measured from that time it received the City's answer to the grievance that caused it to appeal to the grievance arbitration.

In the undersigned's opinion correcting the omission only makes sense, and the City has advanced no persuasive argument for retaining the status quo language. Correcting this omission will serve to avoid any future disputes regarding whether a grievance has been timely appealed to arbitration. When the parties have an opportunity in their negotiations to correct an obvious mistake or omission in their existing contract they should seize the opportunity. Not doing so can only lead to unnecessary disputes in the future.

Therefore it is the undersigned's recommendation that Article 7, Section 7.3, Step 4 be amended by adding the number 3 after "Step" in the last sentence.

2. Article 18, Section 18.2 Jury/Witness Duty

The City argues this language can be deleted because presently it has no part-time employees. The Union argues it is the recognized exclusive collective bargaining representative for the classifications listed in the contract's recognition clause and that language does not exclude part-time employees. It points out that the recognition clause includes the classifications of Deputy Clerk and Administrative Assistant without regard to whether they are filled on a full or part-time basis. It notes that in the past the City has employed a part-time Administrative Assistant and if the City were to ever employee part-time employees in these positions in the future retention of the language would avoid the need for the parties to renegotiate new language. Therefore, the Union argues that the fact finder should not delete the language in Article 18.2. The City argues that because

currently there are no part-time employees eliminating the reference in Article 18.2 has no effect upon the Union's right to represent part-time employees.

I would agree with the City that removal of the reference to part-time employees in Article 18.2 does nothing to jeopardize the Union's representation rights set forth in Article 2 Recognition. Article 18.2 merely sets forth the jury/witness benefits employees are entitled to and explicitly grants them to part-time employees. However, an examination of the recognition clause at Article 2 refers to some classifications without reference to full or part-time status and others specifically as full-time. The Union has pointed out that in the past the City has employed an Administrative Assistant on a part-time basis.[2] The parties have not introduced any history regarding the City's recognition of the Union and/or any bargaining history regarding the language appearing in Article 2 Recognition. Thus, the undersigned believes it would be a mistake to change the language of Article 18.2 Jury/Witness Duty as the City proposes, even thought there currently are no part-time employees. The inclusion of the language in Article 18.2 referring to part-time employees and how it was applied, if ever under the 2005-06 contract, may have a bearing on resolving any future disputes regarding the Union's representational rights. Furthermore, there has been no showing that there is a need for the change, and/or that maintaining the language in the agreement in any way harms the City.

Consequently it is the fact finder's recommendation that the existing language of Article 18.2 Jury/Witness Duty remain unchanged in the new agreement.

3. Article 11 Weekend & Holiday Duty (Water & Sewer Departments)

The City has proposed the elimination of this article. The Union provided the fact finder with a narrative history of the current language. That history shows that historically the City regularly scheduled one employee from the Sewer Department and one employee from the Water Department to work 3 hours each day on Saturday and Sunday. In response to the City stating it no longer needed 2 employees to perform the required work on Saturday and Sunday the parties negotiated the existing language and

[2] The Union did indicate when in the past this occurred, under the 2005-06 contract or before the Union became the recognized exclusive collective bargaining agent for this bargaining unit.

under that language only a single employee is scheduled to work 5 hours on Saturday and Sunday. In negotiations for the 2005-06 contract the City argued that employees assigned to work on the weekends were finishing their required tasks in less than five hours and going home and the City objected to paying them the full five hours of pay. The Union then agreed that the City would assign additional duties and the employee would stay on the job for the entire five hours.

The Union argues that despite the Union's willingness to accommodate the City concerns regarding the weekend work provision the City never made a specific proposal to address its concerns and only ever expressed that the assigned employees did not need the full five hours to complete the necessary tasks to insure that the City's water and sewer systems were operating properly. Also, it claims that Article 11 provides essential protection against the City unilaterally establishing a different workweek for some employees in order to avoid its contractual overtime obligations. The Union argues that if the City is seeking to establish a position with a different regular workweek that should be negotiated between the parties, particularly in light of the employees' willingness to work with the City in providing the necessary weekend services.

The City, as evidenced by a March 6, 2006 memo from the City's water Department Superintendent, argues that the five minimum hours scheduled for Saturday and Sunday to complete necessary tasks in the Water and Sewer Department is unnecessary. Superintendent Casey stated in his memo that 45 minutes on Saturday and 45 minutes on Sunday would be sufficient to complete the necessary tasks. The City also introduced evidence as to what Cities in its proposed pool of external comparables were doing regarding weekend duty and standby pay.

There is no record evidence as to what any of the external comparables the fact finder has identified as either primary or secondary have done regarding weekend duty. The City did adduce evidence regarding standby pay, but that is not in dispute in this case (Article 10). It is the weekend/holiday duty language providing that an employee is scheduled to work five hours over Saturday and Sunday in the Water and Sewer Departments. The Union did not take issue with the Casey memo's assertion that only 45 minutes on each day is required to perform the necessary tasks due to reduction in the required frequency of testing samples thus eliminating the requirement for weekend

testing. Also, the memo states that due to an automated plant metering system it is no longer necessary to read meters in some plants on weekends.

The Union argues its members have indicated a willingness to work with the City on this issue and thus urges the fact finder to leave this issue to the parties to negotiate. It argues that the City has not made a specific proposal to address its needs and rather has proposed the elimination of the entire article. On the other hand City Administrator Strickland testified that with the elimination of Article 11 the City would utilize Article 10 to take care of its weekend/holiday needs. He said that currently pursuant to article 10.2 Water/Sewer employees are rotated by the week on standby and paid $8 per day for being on standby. The employee on standby would then be utilized to work on weekends/holidays and paid in accordance with Article 10.1.

I appreciate the City's concern that it is required to pay for five hours of work each weekend when only 1 ½ hours is needed, but by the same token scheduled employees are required to keep themselves available on a rotating basis for weekend work that according to the City only requires 45 minutes each day to complete. A balance should be struck between the City's needs and the inconvenience to the employees. That has been done in the standby pay and call-in pay provisions of Article 10.2 and 10.1 respectively. Article 10.1 provides that if an employee is called into work outside his/her regular shift he/she must be paid a minimum of two hours at one and one-half times their regular rate of pay. This minimum number of hours paid requirement is what the parties have factored in to account for the inconvenience to the employee to come in to work on the weekend or holiday to service the City's needs and also preclude abusive situations where an employee might be called in for only 15 minutes of work.

The real issue here is whether the status quo should be continued for another year in the face of unrefuted evidence that there is no longer a need for the five hours of work mandated by Article 11. Continuing the status quo for another year seems to the undersigned to require the City to assume costs that are no longer necessary due to changes in regulations and technology. The need for change that exists now has been established and it should be addressed in this bargain. The Union has not presented a persuasive argument to delay change for another year or why the City's proposal is not a reasonable solution to the issue. The City's proposal addresses its stated need for change

and has shown that its reliance on the existing Article 10 serves its need as did Article 11, but without the current five hour minimum, while at the same time protecting the employees interests. Article 10 provides additional pay to employees for being on standby and making themselves available for work and also guarantees them a minimum of two hours pay if they are in fact called in to work. Article 9, Sections 9.4 and 9.5 deal with the rate of pay the employee is to receive if called in to work on a holiday. The undersigned is persuaded that Article 10 balances both parties' interests on this issue. It doesn't require the City to pay for five hours of work when less is needed, yet it guarantees employees a minimum of two hours work per day on weekends or holidays when they are called in to meet the City's needs. It also provides that employees will be available to perform such work pursuant to the standby pay provision of Article 10.2

Therefore, it is my recommendation that Article 11 be deleted as proposed by the City, and doing so will require that the remaining articles in the contract be re-numbed to account for the elimination of the existing Article 11.

4. Article 8.2 Work Schedules

The City has proposed that Article 8.2 be amended to provide that all maintenance employees have the same work day from 7 a.m. to 4 p.m. with a one hour lunch period. It argued that Water Department employees' regular workday spelled out in Article 8.1 is from 7 a. m. to 3:30 p. m. whereas the Street and Sewer employees regular work day is from 7 a. m. to 4 p. m. The difference in shift ending times lies in the lunch period each receives. The Water employees receive a 1/2 hour lunch period whereas the Street and Sewer employees receive a one hour lunch period. The Union argues the City has not provided any evidence of a specific need for the proposed change. The City claims that creating a uniform regular work day for all three groups of employees will insure that when the three groups of employees are working together on a project as they often do City will not be required to pay Water employees ½ hour overtime to stay on the project until the end of the work day for the other employees. The City also argues that residents will know that all employees go home at 4 p.m.

Neither party adduced any testimony regarding the history of how it came to be that Water employees receive a ½ hour lunch period and end their shift at 3:30 p.m. whereas

Street and Sewer employees receive a one hour lunch period and end their shifts at 4 p.m. Apparently, there is currently no operational need that would be negatively impacted by the change, and in fact the City claims an operation need for the change. Also, this item is further complicated by the Union's pending grievance regarding whether the contract requires the City to pay bargaining unit employees for a ½ hour lunch period. If that turns out to be the case then one would have to wonder why Street and Sewer employees would continue to receive a one-hour lunch period with ½ hour of it being paid.

The City, as the proponent of the change, bears the burden of proving the need for the change. While it argues that there are joint projects that conceivably could generate over time for Water employees if they are needed on the project beyond 3:30 p.m. it adduced no evidence showing how often that has happen in the past or how many times work on projects were adversely impacted because Water employees ended their day at 3:30 p.m. because the City did not want to incur the over time costs for them to stay until 3:30 p.m. There is also the issue of Water employees then being required to take a one-hour lunch period. All in all there are too many unanswered questions and a lack of evidence proving that the existing situation is a serious problem that requires the imposition of the change proposed by the City.

Therefore, it is my recommendation that the Water Department employees regular shift of 7:00 a.m. – 3:30 p.m., that is set out in Article 8.2, remain unchanged during the 2006-07 contract term.

5. Article 8, Section 8.5 Lunch/Break Times

The City has proposed that the language of Article 8.5 Lunch/Break Times be amended to delete the language "Employees shall receive a paid one-half (1/2) hour lunch near the middle of Employee's shift." The Union argues there is a grievance currently pending and also the matter of the grievance is pending in court over the issue of arbitrability, and therefore, the fact finder should leave the issue to be resolved in litigation and not recommend any change to the existing language. The City argues that even though the matter is the subject of a grievance and court action, nonetheless the issue of employees being granted a 1/2 hour paid lunch is an open issue in bargaining,

and therefore, the City's proposal is appropriately before the fact finder for a recommendation.

The City contends that the current language that it proposes be deleted does not reflect what it agreed to in the last negotiation. It contends that the ½ hour paid lunch language was only intended to apply to the Fire Dispatcher position and not all employees in the bargaining unit. The language as it now appears showed up in the draft language prepared by the Union, and the City did not catch the mistake and that is how it came to be in the contract as presently written. It argues that it is an appropriate issue for fact finding notwithstanding that there is currently a grievance and court action pending over the issue.

The undersigned is sympathetic to both parties' positions. The City wanting to get out from under an obligation it argues it did not agree to, and the Union apparently believing to the contrary and why it is pursuing a grievance to enforce what it believes was the bargain. The parties did not provide me a copy of the grievance nor did they go into any detail regarding the specifics of the grievance. If the grievance ultimately proceeds to hearing the parties can make their cases for whether the grievance should be sustained or denied and that should necessarily get into the bargaining history that led to the current language. If it can be shown that the scrivener of the language was mistaken in the drafting or if the parties did in fact agree to a ½ hour paid lunch for all employees that will be established. Once that matter is resolved and if the City is proven incorrect then it can come into negotiations next year and seek to modify or eliminate the requirement. Were the parties proposing this to be a multi year contract I might view this matter differently, but that is not the case and this agreement will only be for a term of one year. No doubt the parties will have an answer to the question before bargaining commences on a successor to the subject collective bargaining agreement. If, once they know the outcome and either proposes to change that outcome in bargaining, they are then unable to reach agreement and one party pursues the matter to impasse at least the fact finder will have the benefit of the negotiating history and what concessions, quid pro quo etc. there may have been leading to the initial agreement that will assist him/her in reaching a recommendation. As it stands, I have not been provided with any of that information. Furthermore, it is the City's position that it only intended for the fire

fighters to receive the ½ paid lunch and so if the language were in fact eliminated there would be no basis for the alleged intended beneficiaries to continue receiving the ½ hour paid lunch.

Therefore, it is my recommendation that the existing Article 8, Section 8.5 language remain unchanged in the 2006-07 contract.

6. Article 18.4 E. Sick Leave

The City has proposed modifying the current language of Article 18.4 E that provides: "Employees shall be able to cash-out up to fifty percent (50%) of all sick pay upon leaving the service of the City with twenty (20) years of service with the City." The City's proposal is to delete "with the City" and insert in its place "and not separating due to misconduct". City Administrator Strickland testified that an employee could hurt the City in such a way that his/her discharge would be warranted and at the same the City would not want to reward that employee by allowing him/her to cash out 50% of his/her banked sick leave at the time of separation. The City argues that an employee who hasn't performed up to expectations should not be rewarded if he/she is terminated for cause. The Union counters that the City has not proven there have been problems with the current language and consequently has not established that the proposed change is needed.

In the undersigned experience the reasoning behind sick leave pay out provisions like this one is to provide employees with an incentive to not abuse sick leave. Under the parties contract employees earn sick leave at the rate of one day per month for each full month of service or fraction thereof and can accumulate up to a maximum 120 days. The point of the pay out is to encourage employees to not abuse the sick leave benefit by adopting an attitude that "if I don't use it I am going to lose it anyway when I quit or retire". Thus, an employee with 20 years (240months) of service to the City can have accumulated up to a maximum of 120 days of sick leave out of a potential 240 days earned. The City has agreed to reward that employee by paying him/her the cash value of 50% or 60 days of the maximum accumulation allowed.

The City's proposal would have that employee forfeit that pay out if he/she is terminated due to misconduct. But why should that misconduct also endanger a benefit

he/she earned on account of his/her conduct relative sick leave usage over the 20 years of employment by the City. While the employee may have engaged in misconduct the ultimate penalty for that misconduct is the loss of his/her employment, the stigma attached to it, as well as the impact a discharge or forced resignation has upon his/her future employment prospects. The sick leave pay out is a benefit he/she earned while in good standing with the City.

Furthermore, in the contract with its police bargaining unit the City has agreed to language that specifically provides in Article XXII Severance Pay "EMPLOYEES who quit or are discharged will be paid for . . . and, who has twenty (20) years of service, one-half (1/2) of any unused, accrued sick leave." Also, the Union points out that the City has not shown this benefit has created a problem in the past that needs to be addressed.

Therefore, for the reasons discussed above it is my recommendation that the existing Article 18, Section 18.4 E language remain unchanged in the 2006-07 contract.

7. Article 3 Definitions, Overtime and Article 9 Overtime Section 9.1

The City proposes to eliminate the requirement in Section 9.1 that it pay employees overtime for hours worked in excess of eight (8) within a twenty four-hour period and the corresponding language in Article 3 where overtime is defined as being work performed in excess of eight (8) hours in a twenty four hour period. Were its proposal adopted it would mean the City would no longer be required to pay daily over time, but rather would only be obligated to pay over time for hours worked in excess of forty (40) hours in a seven (7) day period. This is obviously a significant change and the City's rationale for this proposal is to reduce its over time costs.

The Union argues that City's obligation to pay overtime for work performed beyond eight hours has been in existence for a long time. It adduced evidence showing that among the pool of external comparables that it proposed seven of them paid overtime after eight hours in a day and five did not.

Among the external comparables that the undersigned has concluded are appropriate, three of those I have identified as primary comparables pay overtime after eight hours and two do not,[3] and of the secondary comparables LeMars does and Spencer does not.

[3] Algona, Estherville,and Orange City do, whereas Emmetsburg and Harlan do not.

Thus, four of the seven comparables pay over time after eight hours worked in a day. Thus, the City's contractual requirement to pay its employees overtime for hours worked in excess of eight in any twenty four-hour period is not out of line with its comparables.

The City proposed no quid pro quo in connection with this proposal which would have the effect of denying overtime pay to employees who work more than eight hours in any one day, but who also are on paid leave e.g sick leave, vacation, on at least one other work day within a seven day period. While in some cases when an employee works more than eight hours in a 24 hour period and works 32 hours the rest of the week the employee would still be paid over time for the hours he/she worked in excess of eight on that day even if the City's proposal were adopted. There is no evidence in the record to show the monetary impact this proposal would have on employees. There is also no record evidence of the City's financial circumstances, the extent of its daily overtime costs, what if any steps it has already taken to eliminate/reduce daily overtime. Consequently, it is impossible to determine how severe of a problem employee daily overtime is and what this proposal would accomplish in resolving any problem that exists regarding daily overtime.

Therefore, it is the undersigned recommendation that the City's overtime proposal not be adopted and that the existing language of Article 3 and Article 9, Section 9.1 remain unchanged in the 2006-07 contract.

There remains to be discussed proposals dealing with four substantial economic issues - wages, longevity, health insurance and vacations.

1. Wages

The City has proposed a 2% across the board wage increase for all bargaining unit employees effective July 1, 2006. The Union has proposed that bargaining unit employees receive a 3% across the board increase effective July 1, 2006.

The Union adduced evidence showing that the wage increases for the period 7/1/06 – 6/30/07 among the external comparables that I have identified as appropriate were as follows: Algona 3%, Estherville 5%, Harlan 2.2%, Le Mars 5%, Orange City 2.5%, and Spencer 3%. There is no record evidence as to what if any wage increase has been

negotiated for Emmetsburg represented employees. The Union argued that its 3% proposal keeps Cherokee employees "in the ballpark" of wage rates among its comparables whereas under the City's 2% offer employees would lose ground. Therefore, it concludes its wage offer to keep employees in the same position relative to the comparables is not out of line. The City, on the other hand, argues that its proposal for a 2% increase is reasonable in the current economic climate.

The Union did not include Emmetsburg in its list of comparables, and therefore provided no information regarding the percentage wage increase in the utility bargaining unit for the period 7/1/06 – 6/30/07. The City included Emmetsburg in its data submission, but there was no information included regarding a percentage wage rate increase for the subject period (7/1/06 –6/30/07). Clearly, these settlements among the external comparables show that the City's 2% offer is lower than any of the known settlements among its external comparables. Also, there has been no showing that the economic climate in Cherokee is materially different from that existing in the external comparable communities.

Even more significant in the undersigned's opinion is the City's settlement with its police bargaining unit. The City's contract with its police bargaining unit is for the period 7/1/05 – 6/30/06 and provides for a 3% increase effective July1, 2006, in the second year of the two year agreement. Most arbitrators/fact finders have concluded, including this one, that internal comparability is an important consideration in evaluating the economic proposals of the parties. Where it can shown that the employer has negotiated to agreement with other represented employees in its employ, the terms of that agreement regarding wages and fringe benefits is a factor to be accorded significant weight, if not, controlling weight absent some unusual circumstance surrounding such agreement(s) that diminishes its persuasive value.

There is no record evidence to suggest, nor has the City argued, that its circumstances have changed so materially since it reached the agreement in the police bargaining unit that it has lost its persuasive value. There also has been no showing that its financial situation has significantly changed since it negotiated the 3% increase with its police bargaining unit.

Therefore, because the City's offer of a 2% wage increase is less than that negotiated by any of its external comparables, there is no evidence that its economic circumstances are materially different form its comparables, and more importantly because it bargained a 3% wage increase for it police bargaining unit for the same period, the undersigned concludes the Union's proposal for a 3% wage increase for bargaining unit employees effective July 1, 2006 is the more reasonable and recommends that it should be incorporated into the parties' 2006–07 contract.

2. Longevity

The Union has proposed that all longevity rates appearing in Article 21 of the existing contract be increased by $.10 per hour effective 7/1/06. The City proposes that the rates remain unchanged for the period 7/1/06-6/30/07.

In support of its proposed increase to the existing longevity rates the Union argues that the longevity rates need to be examined in light of the top wage rates in each classification. It contends that the top wage rates in this bargaining unit are lower than the top wage rates of its external comparables in a number of classifications. It notes that the City has made up for its lower top rates with is longevity program

The Union's proposal would increase the annual longevity payment at each level by $208 per year. Yet, the City's longevity plan is already the best among its comparables by a substantial amount at every step, which the Union acknowledges. The longevity rates among the comparables range form a maximum of $20.80 per year at Algona to $1250 per year at Estherville, whereas the Cherokee longevity maximum is $2600 per year. Just as significant, the City's longevity plan for its police bargaining unit is identical to the existing plan in this bargaining unit.

The Union argues that the longevity plan balances out the City's top wage rates that in some classifications are below its comparables. But, it also acknowledged that if its 3% wage offer were adopted that would keep its members "in the ballpark" of the comparables. Consequently, I am not persuaded that if employees' receives a 3% wage increase effective 7/1/06 the Union has made a compelling case for also increasing the longevity rates at this time.

Therefore, it is the undersigned recommendation that the longevity rates appearing at Article 21 in the existing collective bargaining agreement remain unchanged in the 2006-07 contract.

3. Health Insurance, Article 17

The City proposes that the employees who elect the dependent/family health insurance coverage be required to pay 50% of the total premium cost of those coverage plans. Currently, the City pays 100% of both the single and dependent/family coverage plan premiums. The parties do not now have the new premium rates that will be in effect on July 1, 2006. The total premiums for those coverage plans effective July 1, 2005 and currently in effect are as follows: Employee = $333.61/mo.; Employee/Spouse = $683.24/mo.; Employee/Child = $631.53/mo.; Family = $1023.85/mo.

The City argues that economic reality requires that employees should be required to contribute some reasonable amount toward the cost of the dependent/family coverage premium cost. It notes that it now pays twice as much for that coverage than for single coverage yet the employee contributes nothing. The Union counters that none of the comparables require their employees to contribute 50% of the cost of the premium for dependent/family coverage. It contends that the City is asking for too much in one jump and its proposal is extreme, particularly when the Union agreed to plan design changes in 2004 in an attempt to hold down cost increases. It claims the City is asking employees to contribute a $1.50 per hour and that would eat up its proposed wage increase and more.

The parties submitted some conflicting documentation regarding the employer/employee percentage contribution levels for the dependent/family plan coverage among the comparables. Therefore, I requested the parties provide me the actual contract language for the comparables that necessarily would be controlling evidence as to the required contribution levels. I was provided with the contract excerpts for Algona, Emmetsburg, Estherville, Harlan, and Orange City, but not for LeMars and Spencer. Those excerpts show that in Algona the employee contributes 15% of the family plan coverage premium; in Emmetsburg the contract excerpt indicates the City will provide "for full-time employees and their dependents major medical insurance" and does not indicate the employee is required to make any contribution toward the premium

cost; the Estherville contract excerpt indicates that the employee contributes 20% of the premium costs for dependent coverage; the contract in Harlan indicates that effective July 1, 2006 the employee must contribute 8% of the monthly premium for dependent/family coverage; and in Orange City under its contract employees electing family coverage must contribute 25% of the premium cost for that coverage. The City did not submit information concerning the employee contribution levels for dependent/family coverage in LeMars and Spencer, no doubt because it did not consider them a comparable. The information submitted by the Union showed that in LeMars the employee was not required to contribute toward the dependent/family coverage and in Spencer the numbers show the employee contributes 24% for spouse coverage and 30% for family coverage.

Thus, the evidence is that among the external comparables in Algona, Harlan, Orange City, Estherville, and Spencer employees are required to contribute toward the premium costs of the dependent/family coverage health insurance plans, and only in LeMars and Emmetsburg does the City pay the entire cost of the dependent/ family plan premium cost. So, of the primary comparables only one city pays the entire cost of the dependent/family premium while in the other four the employee is required to contribute anywhere from 8% in Harlan up to 25% in Orange City. Among the larger secondary comparables the City of LeMars pays 100% of the dependent/family premium cost and in Spencer the employee pays 30% of the cost of family coverage and 25% of the spouse coverage premium cost. Clearly, the pattern among the external comparables is that the employee is required to contribute some percentage of the dependent/family coverage premium costs.

The language of the City's contract with its police bargaining unit pertaining to health insurance contains a "me too' clause which states:

> "The employees who are represented by the Cherokee Policeman's Association under the 2005-2007 contract will not be responsible for any monetary contributions toward dependent Group Hospital and Medical Insurance Plan until all other employees in the employment of the City of Cherokee are contributing toward a health plan, except the City Administrator who is under a separate employment contract with the City. When all other employees, other than the City Administrator, in the employment of the City of Cherokee are contributing toward their health plan,

the Cherokee Policeman's Association agrees that it will begin contributing a like amount."

So, currently employees in the only other represented bargaining unit in the City are not required to contribute toward the premium cost for the dependent/family health insurance coverage.

Clearly, external and internal comparables are factors considered by arbitrators and fact finders in evaluating the economic proposals of the parties. But, another important factor to be considered when a party is proposing a significant change in the negotiated status quo of a fringe benefit is whether the proponent of the change has shown that a legitimate problem exists which requires attention, that its proposal reasonably addresses the problem, and that the proponent of the change has offered an appropriate quid pro quo in return for agreement to the change. In this case, the City has identified the problem with dependent/family health insurance coverage as being its high and continually increasing cost. Currently, the total premium cost for family plan health insurance coverage is $1023.85/month. The premium has increased to that level from 876.69 effective July 1, 2002 and although the parties do not know what the premium level will be for the term of the 2006-07 contract they have been told to expect a 10% increase. There can be no doubt that the City has identified a problem.

Its proposed solution to that problem is to require employees to contribute 50% of the cost of the total dependent/family coverage premium cost. While the City's proposal solution is a solution to the problem in that it significantly reduces the City's costs, as the Union has argued, its solution is almost double the 30% contribution required of City Spencer employees electing family coverage, which is the highest employee contribution level among the external comparables. The City's proposal does, however, enjoy support among the comparables as noted earlier in that four of the five primary comparables require employees to contribute some percentage of the dependent/family premium cost. The City, however, does not require employees in its only other represented bargaining unit to contribute toward the cost of the dependent/family premium.

Another significant consideration is the matter of a quid pro quo. Much has been written by other arbitrators/fact finders about the need for a quid pro quo when a party is proposing a change in the status quo in health insurance as the City has in this case.

There is no set answer as to when a quid pro quo is required. Generally, arbitrators/fact finders conclude one is required in all but unusual circumstances. But, the quid pro quo doesn't have to be of equivalent value to what is being given up. Arbitrators/fact finders have also addressed the issue of the sufficiency of the quid pro quo being offered for proposed changes in the health insurance plan provided for in the parties' collective bargaining agreement. Not surprisingly their conclusions are clearly based upon the unique facts of each case and thus no general rule regarding what constitutes a sufficient quid quo pro has emerged. In this case no such analysis regarding the sufficiency of the quid pro quo is necessary inasmuch as the City has not offered one.

It is worth noting however, that if the City's proposal were adopted based upon the current family premium of $1,023.85/month the cost of the 50% employee contribution would be the equivalent of $2.95/ hour ($1,023.85/mo x 12mos. = $12,286.20/yr divided by 2080 hours/yr. x 50% = $2.95/hour). If one assumes a 10% increase in the premium effective July1, 2006 the same calculation generates an equivalent cost to employees of $3.25/hour (1,126.23/mo x 12mos. = 13,514.76/yr. divided by 2080 hours/yr. x 50% = $3.25/hour). If one assumes employees were only required to contribute 10% of the family premium cost estimated to be $1,126.23/mo. or $112.62/mo. effective July 1, 2006, the cost to the employee would be $.65/hour (1,26.23/mo. x 12mos. = $1,351.44/yr. divided by 2080 hours/yr. = $.65/hour). Clearly, the City's proposal would have a substantial negative financial impact upon employees electing family plan health insurance coverage.

In the undersigned's opinion, even though the City has made a case for employees to make some contribution to the premium for dependent/family coverage the City's health insurance proposal is not reasonable because it is not supported by either the internal or external comparables. And also, it represents a substantial change from the current status quo that requires no contribution from employees choosing dependent/family health insurance coverage with no accompanying quid pro quo. In the next round of negotiations both this bargaining unit and the police unit will be bargaining for a new agreement to be effective July 1, 2007. In those negotiations the City can explore this issue with both bargaining units and make proposals for change with an

accompanying appropriate quid pro quo. If all parties tackle the issue seriously and in good faith they should be able to come to a resolution that meets all their needs.

For the above stated reasons it is the undersigned's recommendation that there be no change to Article 17 Insurance, Sections 17.1 and 17.2 in terms of the level of the City's contribution for the dependent/family health insurance plan.

4. Article 18.3 Vacation Leave

The Union has proposed that the vacation benefit be modified in two respects. It proposes that the that the maximum number of days vacation that can be earned be increased from 20 days to 25 days and that the number of years of service required to be eligible for the various levels of vacation be changed. It proposed the following schedule:

0-1 years = 5 days
2-5 years = 10 days
5-10 years = 15 days
10-20 years = 20 days
20+ years = 25 days

The existing schedule is as follows:

0-1 years	5 days
2-6 years	10 days
7-14 years	15 days
Over 15 years	20 days

Under the Union's proposal the maximum vacation days that can be earned would increase form 20 days to 25 days, and employees would earn 15 days and 20 days vacation after fewer years of service than currently is the case.

The Union argues that this proposal will benefit most bargaining unit employees as this is a very senior bargaining unit, but it also recognizes employees who have been loyal to the City for many years. It points to five comparables that have vacation benefits that exceed 4 weeks after 20 years service. So the Union contends among the comparables 5 weeks of vacation after 20 years of service is not unheard of. The City, on the other hand, argues that the current vacation benefit is comparable to other cities. It

claims this is a big issue for the City because its departments are small and due to the vacation plan 33% of the time it only has a three-man department so it is not getting a full year of work. It argues it cannot have more employees away from work for vacation than is already the case.

Of the seven external comparables I have identified as appropriate Orange City (16 years) and Spencer (15 years) employees receive a maximum of 4 weeks, LeMars (15 years) employees receive a maximum of 4 weeks and one day. Algona (20+ years), Estherville (20+ years), Emmetsburg (40 years) and Harlan (25 years) employees can earn a maximum of 5 weeks vacation. The Cherokee police bargaining unit employees can earn up to 240 hours or 6 weeks of vacation with over 15 years of service. Under the Union's proposal the maximum vacation benefit would increase to 5 weeks.

Among the external comparables the years of service required to earn 3 weeks of vacation is 5 years at LeMars, 7 years at Estherville and Emmetsburg, 8 years at Algona and Spencer, and 10 years at Orange City and Harlan. Under the Union's proposal Cherokee employees could earn 3 weeks of vacation with 5 years of service and 4 weeks with 10 years of service and 5 weeks with more than 20 years of service. Whereas, under the existing vacation provision employees earn 3 weeks at 7 years and 4 weeks at 15 years. The Union's proposal would put them at the top of the external comparables in terms of the least number of years of service required in order to earn both 3 and 4 weeks of vacation. Employees earn 4 weeks at 14 years in Algona, at 15 years in LeMars, Orange City, Estherville, Emmetsburg and Spencer, and at 20 years in Harlan.

Clearly, the current 4 weeks maximum vacation benefit is less than the five weeks that four of the primary external comparables (Algona, Estherville, Emmetsburg and Harlan) provide. In terms of how many years of service are required to accrue 3 weeks of vacation the existing Cherokee vacation benefit is in the middle of the external comparables, and at the 4week level it at the top in terms of fewest years of service necessary to earn at that level.

However, compared to the Cherokee police bargaining unit this bargaining unit earns less vacation with the same number of years of service than in the police unit. The police bargaining unit vacation plan is as follows:

0-1 years	60 hours

2-6 years	120 hours
7-14 years	180 hours
Over 15 years	240 hours

After examining all of the evidence the undersigned is not persuaded that the Union has a persuasive case for changing the existing contract in terms of the years of service required to earn 1, 2, 3, and 4 weeks of vacation notwithstanding the vacation provided to police bargaining unit employees. It does however have a compelling case for employees being able to earn 5 weeks of vacation. In four of the five primary external comparables employees can earn up to 5 weeks of vacation (Algona, Estherville, Harlan, Emmetsburg) and in the police bargaining unit employees can earn up to 6 weeks of vacation. I am persuaded that Article 18, Section 18.3 should be amended to provide for employees to earn 5 weeks of vacation with 20 years of service. Such a change is supported both by a comparison of the existing vacation benefit with the primary external comparables and the only internal comparable, the police bargaining unit.

Therefore, it is the undersigned's recommendation that the existing language of Article 18, Section 18.3 be amended to provide

Years of Service	Days of Vacation
0-1 years	5 days
2-6 years	10 days
7-14 years	15 days
15-19 years	20 days
20+ years	25 days

Entered this 23rd day of March 2006.

Thomas L. Yaeger
Fact Finder

CERTIFICATE OF SERVICE

I certify that on the 23rd day of March 2006, I served the foregoing Report and Recommendations of the Fact Finder upon each of the parties to this matter by mailing a copy to them by mailing a copy to them at their respective addresses shown below:

Mr. Marvin Wallace Miller, Jr.
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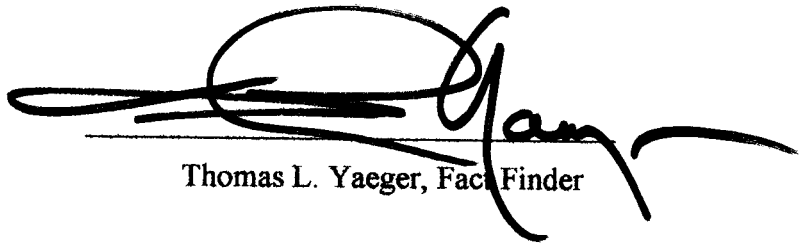
I further certify that on the 23rd of March, 2006, I will submit my Report and Recommendations for filing by mailing it to the Iowa Public Employment Relations Board, 501 East 12th Street, Suite 1B, Des Moines, Iowa 50309-0203.



Thomas L. Yaeger, Fact Finder